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NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1983

BRUCE WARREN RUSH,

Petitioner,

v.

U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT, et al.,

Respondents,

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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QUESTIONS PRESENTED

1. Is 42 USCS 659 Constitutional under the 5th Amendment as applied by a U.S. Agency (AID) which transfers the salary of a Virginia resident employee to an individual in Florida without a judicial hearing or review in Virginia when --

a. The Florida Court had not acquired subject matter jurisdiction over the employee's salary earned and located in Virginia?

b. the decision in this case is in direct conflict with the recent case of Morton v. U.S., 708 F 2d 680 and with U.S. Supreme Court cases?

2. Can a federal court give "full faith and credit" under 28 USCS 1738 to an unconstitutional judgment of a state court in which case, if it did so, it would have the effect of depriving an individual of a U.S. Constitutional right without due process of law?

3. Can the Federal Government continue to be a party to extrinsic fraud through de-facto cooperation with a garnishment claimant and continue to suppress vital evidence on paternity by denying procedural due process under URESA and Virginia Code Sec. 20-61.2 and 20-88.28:1 which assure HLA paternity blood tests, which in turn can disprove paternity?

PARTIES TO THE PROCEEDING

Petitioner is Bruce Warren Rush.

Respondents are U.S. Agency for International Development (AID), and Mr. M. Peter Mc Pherson, Administrator of AID, both represented by U.S. Attorney Charles Flynn, U.S. Court House, Washington, D. C. 20001.

Other potential parties respondents who may be added under Rule 21 of the Federal Rules of Civil Procedure if Petitioner wins this appeal:

a. Lan T. (Ly) Rush.

b. Mrs. Rush's daughter.

c. Ms. Patricia Warren, Lan T. Rush's attorney.

d. Circuit Court of Okaloosa County, Florida.

e. District Court of Appeals, Tallahassee, Florida.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioner, Bruce Warren Rush respectfully prays that a writ of certiorari issue to review the judgment and opinion of the U.S. Court of Appeals for the District of Columbia Circuit entered in this proceeding on June 23, 1983.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the District of Columbia Circuit is dated April 26, 1983, and is styled Bruce Warren Rush, Appellant v. U.S. Agency for International Development, et al., Appellees, Civil Action No. 82-1853, below. By Local Order 8 (f) of that Circuit Court of Appeals it was not to be published but it appears as Appendix A and Appendix B hereto. It affirms (and it appears to adopt) the decision and Memorandum Opinion of the U.S. District Court for the District of Columbia which in turn appears as Appendix C and Appendix D.

JURISDICTION

The June 17, 1982 Judgment of the U.S. District Court for the District of Columbia (Appendix C and D) was affirmed by the U.S. Court of Appeals for the

District of Columbia Circuit on April 26, 1983 (Appendix A and B). Petitioners (Rush's) Petition for Rehearing and Suggestion for Rehearing En Banc were denied by the District of Columbia Circuit on June 23, 1983 (Appendix E and F). The jurisdiction of this court is invoked under 28 U.S.C. 2101(c) and Amendments 5 and 14 of the U.S. Constitution and since the deliberations and decision of this Supreme Court may bring into question the constitutionality of 42 U.S.C. 659-662, copies of this petition are being served on the Solicitor General of the United States.*

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitutional Amendment 5* and Amendment 14*

> " No person shall be...deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation. (Amendment 5)....nor shall any

state deprive any person of life, liberty or property without due process of law." (Amendment 14)

42 U.S.C.S. § 659 *

"...money...due from or payable by the United States (including any agency..)...to an individual ...shall be subject, in like manner...as if the United States were a private person, to legal process brought for the enforcement, against such individual, of his legal obligations to provide child support...."

42 U.S.C.S. § 659(f) *

"Neither the United States... nor any government entity shall be liable for payment...to any individual pursuant to legal process regular on its face."

42 U.S.C.S. § 662 (Supp. II 1978) *

"...legal process means any writ or order...in nature of garnishment which

(1) is issued by (A) a court of competent jurisdiction within any state

(2) is directed to...a government entity...to make a payment... to another party to satisfy such legal obligation..."

* Cf. the above and Rule 28.4 plus pp. 6a, 7a, and 14a infra; any certification under 28 USC 1254 (3) and 28 USC 2403 (a) is unknown to Mr. Rush.

STATEMENT OF THE CASE

The Statement of the Case as stated by the Appellate Court on pp. 1-2 of its April 26, 1983 Memorandum (Appendix B) is basically correct as supplemented below:

1. For garnishment purposes the Florida Court lacked "subject matter" jurisdiction over Rush's salary which was earned in and located at his residence in Virginia and the District of Columbia after November 1975. (See Chronology of Physical Residence, Appendix H.)

2. Following only 3 months assignment in Florida in 1975 (only 2 months with Mrs. Rush) he began to question the validity of his Vietnam marriage and fidelity of Mrs. Rush. He was ill-advised to but did, while residing at his place of employment in Virginia, file a suit for divorce against Mrs. Rush in Florida, April 1976. A child was born in May 1976 to Mrs. Rush in Florida.

3. Contrary to statements on page 2 of the Appellate Court's April 26, 1983 Memorandum, Rush has never acknowledged the legal validity of the garnishment orders or the validity of the underlying Florida judgment. At every opportunity he rebutted any presumption that process was regular on its face by showing that the Government had notice of substantial claims of jurisdictional irregularity within the meaning of Morton v. U.S. 708 Fed 2d 680, 689(10), and garnishment fraud.

4. In addition Mr. Rush has repeatedly raised with the U.S. Government issues of extrinsic fraud and criminal impersonation by Mrs. Rush in the belief that evidence is available to the U.S. Government which confirms impersonation and proves that his marriage to Mrs. Rush is in fact fraudulent and bigamous. This case should be remanded to the U.S. District Court so that Rush can seek the

assistance of the U.S. District Court in obtaining that evidence and presenting it to the Court. (See para B of Part IV).

5. Even if the Florida Courts did get technical jurisdiction by virtue of the fact that he filed his lawsuit in Florida, they ceased to have any jurisdiction in personam over Rush after September 1977 at which time Mrs. Rush and her daughter left Florida to reside in Georgia, Alabama and Louisiana while Mr. Rush resided in Virginia.

6. The District and the Appellate Courts "overlooked" and "misapprehended" points of law and fact in Part II and in Part III and IV of this appeal within the meaning of Rule 40(a):

a. This is clearly apparent (as stated and developed herein below) when it applied 28 U.S.C.S. 1738 (and the

full faith and credit provisions) to Part II of this appeal which involves a mandate and injunction directed to a U.S. (AID) Government official to prevent an unconstitutional act by him (and which does not involve the review of a state court action).

b. This is also clearly apparent within the meaning of Rule 40(a) when these courts applied 28 U.S.C.S. 1738 etc. to Parts III and IV of this appeal which did involve state court action; but, they misapprehended and misapplied the law and facts and "overlooked" the fact that the three or more cases in which they applied 28 U.S.C.S. 1738 etc. in Parts III and IV were constitutional law exceptions to the application of 28 U.S.C.S. 1738, etc.

REASONS FOR GRANTING THE WRIT

I.

THE DECISION RENDERED BELOW DIRECTLY CONFLICTS WITH DECISIONS RENDERED BY ANOTHER U.S. CIRCUIT COURT OF APPEALS AND BY THIS U.S. SUPREME COURT.

A. The Rush case is in direct conflict with the case of Allan Wayne Morton v. U.S. (CCA-Fed 1983) 708 F.2d 680.

1. There are many parallels between the Rush case and the Morton case:

a. Where the underlying judgment is void the garnishment must fail. (See Morton Case at page 685.)

(1) In the Morton Case the underlying judgment was void because the Alabama Courts did not have jurisdiction in personam over Morton.

(2) In the Rush Case the underlying judgment was void because in the Florida Courts one judge heard the critical conflicting evidence and another judge made

the findings thus denying procedural due process.

b. In both the Morton and Rush Cases "legal process" in garnishment could not be issued by a "court of competent jurisdiction" because Alabama (Morton Case, 708 F2d 680, 689(7); see footnote 10 at p. 689) and Florida (See p. 5 Supra) courts did not have subject matter jurisdiction over the salary of Morton and Rush respectively.

c. As stated at p. 686 of this Morton Case, "We conclude that competent jurisdiction means both subject matter jurisdiction and personal jurisdiction." In addition, personal jurisdiction should include jurisdiction over Rush and the garnishee, AID. "Finally it is clear that constitutional requirements of due process apply to garnishment proceedings." (Morton v. U.S. 708 F 2d 680, 686(2) 1983 Federal Circuit.)

d. "From the foregoing, it follows that the writs of garnishment issued by the Alabama (Morton Case p. 689, line 10ff) (and the Florida) state court were not issued by a 'court of competent jurisdiction' as required by 42 U.S.C. 659. To hold otherwise and to require (as would the dissent) Col Morton, a resident of Alabama, (and Mr. Rush, a resident of Virginia) to proceed in the Alabama (and Florida) state court against Mrs. Morton (and Mrs. Rush, respectively), would in effect render those statutes violative of constitutional due process, contrary to the principle that a court should construe legislative enactments to avoid constitutional difficulties if possible. United States v. Clark, 445 U.S. 23, 34 (1980) ... " (Morton Case p. 689)

"At the same time, we hold that the immunity provisions of the garnishment statute permit the Government, where the process document is regular on its face, to make

payment without liability on a presumption that the underlying judgment is valid,[11] but that such a presumption is rebuttable by a showing that the Government had notice of a substantial claim of jurisdictional irregularity. (Morton Case p. 689.) That is the case here. ... The Finance Officer (and AID) disregarded the information showing jurisdictional irregularity in the underlying Alabama (and Florida) suit. (Morton Case p. 690) ... We are not persuaded by the Government argument that, were we to hold in Colonel Morton's favor on the facts of this case, the results would be an administrative nightmare. (See second paragraph of note 14, infra.)

"Accordingly, the Government is liable under the Fifth Amendment to the Constitution for monies wrongfully paid pursuant to the Alabama court's writs ...

"The judgment of the Court of Claims is affirmed, and the cause is remanded

for a determination of quantum.[14]

"AFFIRMED"

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[14] ...

"In this case, had the Air Force... (and AID) refused to honor the writs of garnishment, Mrs. Morton's interests (and Mrs. Rush's interests) were ... protected, because ... (Virginia, Florida), Alabama and Alaska had adopted the Uniform Reciprocal Enforcement of Support Act. ..."

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e. Jurisdiction of the garnishee (AID) and continuing jurisdiction of Rush is not enough without jurisdiction of the res or salary. 38 CJS Garnishment Sec. 124, p. 327. Robinson Coe, et al., v. RO-Tek, Inc. 320 NE 2d 151, 161(6) Ill. (1974).

f. Also the Air Force (and AID) should have Interpleaded the salary payments into a "court of competent jurisdiction." (Cf. p. 18 Infra) At this point the Government could withdraw from the litigation.

B. The Rush Case is in direct conflict with the following cases of this U.S. Supreme Court:

1. It is in direct conflict with the Volkswagon Case as follows:

a. The only way the Florida Court could get subject matter jurisdiction of Rush's salary was to apply Harris v. Balk which it and the Appellate Court did and which held that the debt or salary followed the debtor AID into Florida. But the U.S. Supreme Court held in Worldwide Volkswagon v. Woodson, 444 U.S. 286, 296, 62 L Ed 490, 501, that Rush's debt (res or salary) does not travel with his debtor (AID), when Justice White stated:

> " ... We recently abandoned the outworn rule of Harris v. Balk, 198 US 215, 49 L Ed 1023, 25 S.Ct 625 (1905), that the interest of a creditor in a debt could be extinguished or otherwise affected by any State having transitory jurisdiction over the debtor. Shaffer v. Heitner, 433 US 186, 53 L Ed 2d 683, 97 S. Ct 2569 (1977). Having interred the mechanical rule that a creditor's (Plaintiff Rush's) amenability to a quasi

in rem action travels with his debtor, we are unwilling to endorse an analogous principle in the present case."

2. However the Appellate Court and District Court did rely, but should not have relied, on Harris v. Balk (See App. D, p.16a).

3. It is in direct conflict with McElmoyle v. Cohen (1838) 38 US 312, 323, 10 L Ed 177, 182:

> " The judgment of a foreign or sister state" (even under the full faith and credit provisions) "does not (automatically) carry with it into another state the efficacy of a judgment upon property and persons to be enforced by execution"...
>
> "... to be enforceable ... the judgment must be made a judgment of the state where it is to be enforced" Restatement of Law of Judgments 2d (1982) Sec 8, d on page 86, which is almost a direct quote from Mc Elmoyle v. Cohen Case Supra.

4. It is in direct conflict with the Fuentes, et al v. Shevin Case (cited below as amplified by the Machesky v. Bizzell Case cited below.

a. A federal or state

legislature can not grant to a state or to a U.S. Government official (or to an individual) the unrestricted power (without at least a preliminary judicial hearing in the state or locality where the property is located) unilaterally to arbitrarily and summarily seize, convert, confiscate or transfer to others Rush's salary. To do so is in direct conflict with fundamental rights under Fuentes et al v. Shevin, 407 U.S. 67, 94, 32 L Ed 2d 556 at 578. For such a transfer at least a local preliminary judicial hearing is necessary. Whether it be under a replevin, garnishment or attachment it is repugnant not only to the doctrine of the 5th Amendment on which we here rely, but it is also repugnant to the "fundamental rights" against unreasonable ... seizures ... under Amendment 4 to the U.S. Constitution. The dictatorial power of seizure and transfer of property without local hearing and procedural due process violate fundamental

rights protected by the Fuentes Case.

b. The Fuentes Case (cited above) and the Machesky v. Bizzell, 414 F 2d 283, 291(6) referred to above support the point that soverign immunity is not a ban to an injunction against a federal (or a state) official who has allegedly acted in violation of "fundamental rights" guaranteed under the U.S. Constitution, such as protection against confiscation and against violation of 1st Amendment rights. Also see 77 Am Jur 2d, 114-115; 42 Am Jur 2d, p. 103.

C. Although not conceded by Rush, yet, even if the underlying judgment were perfectly valid (Cf. A-1, above); nevertheless, a Florida garnishment order here would be unconstitutional for lack of subject matter jurisdiction over Rush's salary earned and located in Virginia. (See: Morton Case, cited above, at page 689, Note 10, and Cf. paragraph 6, a. on page 7, above)

II.

THE CONFISCATORY AND UNCONSTITUTIONAL APPLICATION BY AID OFFICIALS OF 42 USCS 659

BY REQUESTING AN INJUNCTION AND INTERPLEADER AGAINST AID, RUSH IS SEEKING TO PREVENT AN UNCONSTITUTIONAL INTERPRETATION AND APPLICATION BY AID OFFICIALS OF 42 USCS 659 WHICH WOULD CURRENTLY CONTINUE TO CONVERT AND CONFISCATE RUSH'S SALARY IN VIOLATION OF THE 5TH AMENDMENT TO THE UNITED STATES CONSTITUTION.

A. The Federal Courts have jurisdiction to stop and a duty to stop the unconstitutional administration of this act in a confiscatory manner, and the FUENTES Case and the MACHESKY Case cited below support the point that soverign immunity is not a bar to an injunction against a federal (or a state) official who has allegedly acted in violation of "fundamental rights" guaranteed under the U.S. Constitution, such as protection against confiscation and against violation of 1st Amendment rights.

FUENTES et al v. SHEVIN, 407 U.S. 67, 94; 32 L Ed 556, 578.

MACHESKY v. BIZZELL, 414 Fed 2d 283, 291 (6).

77 Am Jur 2d 114 & 115; 42 Am Jur 2d at p. 103.

B. Rush was denied procedural due process by the Federal Courts and by AID when they failed to interplead Rush's salary and to grant the injunction as requested by Rush. Also inspite of repeated objections by Rush, the continued payment by AID of Rush's salary to a Florida Court without a judicial hearing in Virginia or the District of Columbia deprived Rush of procedural due process contrary to the FUENTES Case cited above at page 18. As stated by Rush before the Appellate Court:

> "A bank deposit in Chicago, stocks deposited with a broker in New York City ... and salary due Mr. Rush in Virginia ... cannot and should not be transferred or turned over by the custodian of the debt to an ex-wife or child simply on the basis of the fact that their attorney had mailed to the bank, broker or other custodian a certified copy of a Florida judgment by registered mail, whether

or not it is "facially valid"."

On this point the RESTATEMENT OF LAW OF JUDGMENTS 2d (1982) under Sec 8, d on page 86 is an almost direct quote from McELMOYLE v. COHEN, 38 U.S. 312, 323. The RESTATEMENT under JURISDICTION FOR ATTACHMENT states:

> "To make the judicial process effective, judgments have to be enforceable ... the judgment must be made a judgment in the state where it is to be enforced. This is done by bringing action in that state" where the salary is located, which in this case is in Virginia.

C. The foregoing is the conventional and procedural due process for enforcing judgments of another state. In this case AID could have (and should have) avoided the above constitutional issue of confiscation and the unconstitutional application of 42 USCS 659 by either:

1. Interpleading Rush's salary into the US District Court of Alexandria, Va., as requested by Rush, or

2. By requiring that the garnishment

in this case be conducted in the conventional manner under doctrines of the McELMOYLE Case, URESA and the RESTATEMENT cited above which prescribe the accepted procedural due process for enforcing judgments of another state.

D. AID's Attorney, the District Court and the Appellate panel cite cases and otherwise indicate a reliance on the "abandoned" and "outworn rule of Harris v. Balk, 198 US 215." However as stated on p. 14 supra, that case was repudiated by the U.S. Supreme Court in WORLDWIDE VOLKSWAGEN v. WOODSON, 444 U.S. 286, 296; 62 L Ed 2d 490 at p. 501 so it can no longer be claimed that since the garnishee (AID or the U.S. Government) conducted operations in Florida, a valid garnishment was conducted in Florida. But since the debt does not follow the debtor for garnishment purposes under the doctrine of the VOLKSWAGEN Case, supra, the debt claim, salary or res is definitely not in

Florida so that Florida does not have subject matter jurisdiction for garnishment purposes. As a result:

> "Although the court may have (had continuing personal) jurisdiction of the parties to the main action, it must also acquire jurisdiction over the property or debt (res) sought to be affected by the anscillary garnishment in order to render a (garnishment) judgment against ... (Mr. Rush's) property ... debt (or salary)," in Virginia.
>
> 38 C.J.S. Garnishment Sec 124, p. 327
>
> Morton v. U.S., 708 F 2d 680, 686(2) (Fed Circuit, May, 1983)
>
> Robinson Coe et al, v. ROTek, Inc., 320 NE 2d 157, 161(6) (Ill. 1974)
>
> Jurisdiction of the garnishee (AID) and continuing prior jurisdiction of Rush is not enough without jurisdiction of the res (or salary).

E. Loss of Jurisdiction. Also continuing personal jurisdiction once acquired by a court can be lost, and when a child acquires a new residence and domicile, a court's new decree is void for want of jurisdiction.

> Krause v. Krause, (Kan '39), 96 P 2d 849, 851 (1)

Leach v. Leach, (Kan '59) 336 P 2d 425

Lanson v. Lanson, (Minn. '30), 252 NW 329

F. Situs of Debt or Salary. Situs of salary is at residence of employee where it is earned and payable and not where jurisdiction is obtained over the garnishee and especially if employee's residence is outside of the state.

6 Am Jur 2d p. 580 ff.

National Bank v. Furtick, 42 A 479 (Del 1897)

Bullord v. Chaffee, 84 NW 604 (Neb.1900)

Craig v. Gunn, 30 A 860; 27 ALR 1396, 1407 (Vt 1894)

Drake v. North Shore et al., 37 NW 70 (Mich 1888)

G. The U.S. Supreme Court makes it clear in Lugar v. Edmanson Oil Co., 457 US 922; 102 S Ct 2744, 2752; 73 L.Ed 2d 482 (1982) that Constitutional requirements of due process have long been applied to garnishment procedures, Morton v. U.S. 708 F 2d 680, 686 (2-3).

III.

DENIAL OF FAIR TRIAL AND APPEAL BY STATE COURTS CONTRARY TO THE 14TH AMENDMENT

EVEN WHEN 28 USCS 1738 IS INVOLVED, THERE ARE EXCEPTIONS TO FULL FAITH AND CREDIT PROVISIONS AND THEY INVOLVE THE DENIAL OF THE BASIC FUNDAMENTAL RIGHTS INCLUDING PROCEDURAL AND SUBSTANTIVE DUE PROCESS IN VIOLATION OF THE 14TH AMENDMENT.

A. Contrary to the position taken by Rush under PART II. above (which did not involve state court actions), here in PART III we are dealing with the merits of state court judgments and whether they involve constitutional defects which may be remedied in Federal Courts. This is a most important concept and element in this case.

B. What are these exceptions? They include:

1. Unconstitutional and Void Judgments, in which cases if we were to give full faith and credit to a state decision, it would have the effect of depriving an individual of a U.S. Constitutional right without due process of law. GARLAND CO.

v. FILMER, 1 Fed Sup 8 (3) (1932). Note: This case appears under 28 USCS 1738 at p. 469 para 68 of the U.S. Code Service (USCS) as published by the Lawyers Publishing Co. of Rochester, N.Y. under the annotation heading: No. 68 Unconstitutional Judgments.

2. A state court judgment which is constitutionally invalid because findings of fact were made by a judge who had not heard material conflicting testimony heard by another judge. This raised the constitutional facts issue of a fair trial and the unconstitutional denial of procedural due process.* Such a judgment is unconstitutional and void and open to direct and collateral attack in state and federal courts. See FUENTES Case and MACHESKY Case cited above at p. 578 and 291 respectively. This is also an exception to 28 USCS 1738, etc. Such a void and unconstitutional judgment lacks sufficient constitutional facts

*See: Reimer v. Firpo, 212 P2d 23, 25(7) (Cal. 1949)

on which a garnishment, attachment, execution sale or contempt can be based. See Infra p. 31.

3. Unconstitutional conditions imposed on Rush's right of appeal which denied Rush procedural due process by the state courts in violation of the 14th Amendment. This is also a denial of a fundamental (U.S. Constitutional) right to a fair trial and appeal. This is also an exception to 28 USCS 1738, etc. See p.28 Infra.

4. Denial of adequate legal counsel at crucial times in the trial and appellate process also deprived Rush of procedural due process within the concept of the Guideon's Trumpet Case, 372 U.S. 335. This is another exception to 28 USCS 1738. As stated below the denial of adequate legal counsel and freedom from unconstitutional conditions apply to civil as well as criminal cases as stated in the FUENTES

Case (32 L Ed 2d 556 at 578, Note 33) the U.S. Supreme Court "does not presume acquiessence in the loss of fundamental rights."

5. The divorce action was heard by Judge Gillis E. Powell, Okaloosa County, Florida, Circuit Court. In a final hearing, February 9, 1977, Judge Powell heard 9 witnesses who gave testimony on the critical issues of adultery, hidden children, prior marriages, impersonation and paternity fraud and brought out new facts that required further investigation. Shortly thereafter, without having decided the case, Judge Powell retired.

Circuit Judge Jere Tolton then took over the case and without hearing the testimony or viewing the demeanor or credibility of the 9 witnesses who testified on the vital issues, he issued a judgment dated September 7, 1977 (almost 2 years after plaintiff began the legal process) awarding household effects, car and property

to the purported wife, plus child support and temporary alimony. A motion for rehearing was filed by the plaintiff and it was denied by Judge Tolton in November 1977.

In April 1978, plaintiff filed an appeal in the First District Court of Appeals, in Florida. As condition for appeal, plaintiff was requested to submit to unconstitutional conditions of an impossible supersedeas bond. He was required to pay off the very awards that he was appealing such as $15,500 of stocks from an account he had listed in the names of Mr. & Mrs. Bruce Warren Rush, child support for a child he had not fathered, plus attorney's fees, etc. totalling over $20,000. He sent a check for $2,000 to cover the child support due to the district appellate court on July 31, 1978. Shortly thereafter, the Circuit Court issued an order for contempt. His attorney then made a motion to withdraw and this was accepted by the Court and one week later

it issued an order dismissing the appeal. Court records indicate receipt of the check but no record that the appellate judges were aware of the check having been received by the Court. Plaintiff Rush was, without any legal representation before the Court and was advised that he had no further recourse for legal action in the State of Florida if the appeal was lost or dismissed. The appeal was dismissed by unilateral order of the Florida Court on September 27, 1978.

In July 1979, the U.S. Agency for International Development began cooperating with the Florida courts (hostile to the plaintiff) in unlawfully extending Florida jurisdiction beyond its borders through garnishment of plaintiff's salary, disregarding plaintiff's evidence that the Court orders were void.

C. Concurrent Jurisdiction. Rush is not attempting to litigate in this case the provincial Florida divorce and garnishment laws which are incidental here. Instead he is making a direct attack against AID to prevent AID officials from enforcing in Virginia and Washington D.C. a Florida garnishment decree which involves substantial jurisdictional defect and a denial of procedural due process. See Morton v. U.S. 708 Fed 2d 680, 689 (10). To stop this both the Florida and the federal courts are the appropriate forum. Within the doctrine of the VOLKSWAGEN Case above at p. 501, the Florida Courts did not have subject matter jurisdiction over Rush's salary which had a situs in Virginia. In this sense the Florida garnishment decree like the judgment in 2. above is an unconstitutional judgment because it denies procedural due process. Therefore it comes within the exceptions to 28 USCS 1738. When the validity of these judgments is challenged

in state or federal courts, a basic test to use is stated in paragraph B 1., above.

D. In the same way that domicile is a jurisdictional fact in a divorce case like Glacken v. Glacken, 28 A 2d 213, 215; 14 N.J. 551, this same concept should apply in a case like ours in which one judge heard critical conflicting evidence and another judge made the findings of facts and entered the judgment without hearing all of the conflicting evidence.

1. In the latter case we are not only dealing with a jurisdictional fact but with a Constitutional fact which can be disclosed by a collateral attack. It is not merely a voidable judgment which can be reversed on review by an appeal; and when such a fact is demonstrated and disclosed by a collateral attack the judgment is void; it is a nullity and thus entitled to no protection or credence under the full faith and credit provisions of the U.S. Statutes,

the U.S. Constitution or the U.S. case (or common) law. In addition it can not serve as a basis or foundation for an attachment, garnishment or execution, even if all of the customary procedures of URESA are followed in the execution process. Morton v. U.S., 708 F 2d 680.

2. The fact is: we are here dealing with jurisdictional facts which render the judgments void when the actual Constitutional and jurisdictional facts and defects are disclosed as they are disclosed here. This can be done by a collateral attack. A void judgment is subject to collateral attack. See James v. Francisco, 295 A 2d 633, 635 (NJ 1972). After these jurisdictional facts or defects are disclosed (including a disclosure by a collateral attack), the so called continuing jurisdiction in a divorce case which may have been acquired by a plaintiff initiating a case in Florida then ceases to be valid for any purpose other than the granting of a new trial.

E. In the execution and garnishment process of URESA Sec. 27, and the URESA Sections of the Florida and the Virginia Code, Rush is entitled to paternity blood testing which can disprove paternity. (See: Virginia Code 20-60.2 and 20-88.-28:1). A key objective of this case is to obtain the blood tests.

F. Under the doctrines of the Fuentes and McElmoyle Cases above, U.S. Officials could not (without violating the 5th Amendment) summarily seize, convert, confiscate and transfer to others Rush's salary (with a situs in Virginia) without a local hearing in and procedural due process in Virginia, Rush's residence.

IV.

EXTRINSIC AND INTRINSIC FRAUD AND DUE PROCESS

EXTRINSIC FRAUD IS THAT WHICH HAS PREVENTED RUSH "FROM FULLY LITIGATING ... ALL RIGHTS ... THAT HE WAS ENTITLED TO ASSERT." "IT IS GROUNDS FOR EQUITABLE RELIEF ... " AND ALSO IS GROUNDS FOR AN EXCEPTION TO 28 USCS 1738, ETC.

A. Areas for possible extrinsic fraud in this Rush case are:

1. Paternity and Maternity Fraud.
2. Criminal impersonation.
3. Bigamy.
4. Marriage/Divorce Fraud.

B. This case should be referred back to the District Court for trial to hear and receive evidence of extrinsic fraud. It should also be sent by this Court

with instructions and directions to the District Court to mandate and require (under its equity powers) that the appropriate U.S. Government agencies (on request by Rush) furnish Rush with evidence on fingerprints, investigative records and identity records which are available and needed to prove extrinsic fraud and bigamy.

C. Mrs. Rush had the Florida Court garnishment decree sent direct to AID for withholding by AID and thereby bypassed the procedural due process for enforcing a judgment of another state as prescribed in the McElmoyle Case and in URESA, including Sec. 27 thereof (See p. 20 above). By doing so Mrs. Rush with assistance from AID officials, the Florida Courts and now with the Federal Courts is effectively acting in an informal partnership with them for the suppression of vital evidence on paternity and garnishment fraud, even if inadvertent on the part of some.

CONCLUSION

For the foregoing reasons including the direct conflicts between federal courts, the petition for certiorari should be granted. The questions presented are substantial and they are of public importance because the procedures in issue deny constitutional and fundamental rights of individuals including procedural and substantive due process which will have far reaching effects on all government civil and military personnel including the issue of discrimination against such personnel.

Respectfully submitted,

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Suite 501,
Washington, D.C. 20006
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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 82-1853 September Term 1982

Civil Action No. 82-01599

Bruce Warren Rush,
Appellant

United States Court of Appeals for the District of Columbia Circuit

v.

FILED APR 26, 1983
George A. Fisher
Clerk

U.S. Agency for International Development, ET AL,
Appellees

Appeal from the United States District Court for the District of Columbia

Before: Mikva, Edwards and Scalia, Circuit Judges

J U D G M E N T

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was briefed and argued by counsel. The issues presented have been accorded full consideration by the court; they occasion no need for an opinion. See D.C. Cir. Rule 13(c). On consideration of the

reasons set forth in the attached memorandum, it is

ORDERED and AJUDGED, by this Court, that the judgment of the District Court appealed from in this cause is hereby affirmed.

It is FURTHER ORDERED, by this Court, sua sponte, that the clerk shall withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. See D.C. Cir. Rule 14, as amended November 30, 1981 and June 15, 1982.

Per Curiam
For the Court

/s/ George A. Fisher
George A. Fisher
Clerk

Rush v. U.S. Agency for International Development, No. 82-1853 (Filed April 26, 1983)

MEMORANDUM

Bruce Warren Rush appeals from the district court's dismissal of his complaint against the United States Agency for International Development (AID) and its administrator. Rush, an AID employee, seeks to prevent AID from complying with a Florida garnishment order that requires the agency to withhold a portion of Rush's salary. He also seeks a return of previously garnished monies. The garnishment was ordered by a Florida state court in 1979 and served on AID pursuant to 42 U.S.C. § 659 (Supp. IV 1980) after Rush failed to make child support payments required by the state court in an earlier divorce judgment. The support order grew out of a divorce action Rush brought in 1976.

Rush alleges that the district court should not have accorded the Florida judgment and garnishment order full faith and credit because of various defects in the judgment. In particular, Rush alleges that the Florida judgment is void because, inter alia, the judge who entered judgment was not the same judge who heard the trial testimony, the underlying marriage on which the divorce decree was premised was invalid, the woman who contested the divorce was not his wife, and the child for whom the Florida court ordered support payments was not his offspring. Finally, Rush alleges that AID violated his constitutional rights by recognizing a judgment rendered by a court which lacked jurisdiction over him.

Under the principle that the United States cannot be sued without its consent,

soverign immunity traditionally has prohibited the enforcement of garnishment orders directed at monies received from the government by federal employees. See Federal Housing Administration v. Burr, 309 U.S. 242 (1940). Since the original enactment of the federal garnishment statute in 1975, however, this immunity has been subject to a limited waiver encompassing garnishment orders, issued by courts of competent jurisdiction, that enforce alimony and child support obligations. 42 U.S.C. § 659(a) (Supp. IV 1980); see 5 C.F.R. §§ 581.101-.501 (1983). At the same time, the liability of the United States, its agencies, and its officers for withholding or redirecting payments under the statute is strictly limited if the garnishment is made pursuant to "legal process regular on its face" and in accordance with the statute and its implementing

regulations. 42 U.S.C. § 659(f) (Supp. IV 1980). In the present case, Rush has not claimed that the garnishment order was facially invalid or that AID violated statutory requirements or applicable regulations. Thus, at least to the extent that Rush seeks reimbursement of funds previously garnished, he is barred by the statute from litigating those claims against AID or its administrator.

To the extent that Rush seeks injunctive relief, most notably for the constitutional claims that he raises, the district court correctly premised its jurisdiction on 28 U.S.C. § 1331 (Supp. V 1981). But Rush is properly foreclosed from litigating in federal court the merits of the divorce decree or the garnishment order issued by the Florida courts. Under 28 U.S.C. § 1738 (1976), federal courts, absent circumstances not present

here, must give full faith and credit to state court judgments. Moreover, the alleged constitutional defects in the Florida judgments that might be remediable in federal court are wholly without merit, as the district court held.

In reaching our decision, we do not attempt to decide the merits of those claims raised by Rush that question the propriety of the actions taken by the Florida courts. Rather, consistent with the general policy that domestic relations is a field peculiarly suited to state regulation and control, we only mean to suggest that the Florida state courts, and not the federal courts, are the appropriate forum for litigating these claims. Rush must seek his relief from the Florida courts.

ORDER TO DISMISS (Filed June 18, 1982)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRUCE WARREN RUSH, Plaintiff, v. UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT, ET AL., Defendants.	Civil Action No. 82-1599 Filed Jun 18, 1982 James F. Davey, Clerk

ORDER

For the reasons stated in the Court's Memorandum filed herewith, it is hereby

ORDERED that defendants' motion to dismiss shall be and hereby is granted and accordingly the complaint is dismissed; and it is further

ORDERED that plaintiff's motion for a preliminary injunction shall be and hereby is denied.

/s/ Gerhard A. Gesell
UNITED STATES DISTRICT JUDGE

June 17, 1982

APPENDIX C

UNITED STATES DISTRICT COURT MEMORANDUM DECISION (Filed June 18, 1982) (pp. 73a-77a)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

BRUCE WARREN RUSH, Plaintiff, v. UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT, ET AL., Defendants.	Civil Action No. 82-1599 Filed JUN 18, 1982 James F. Davey, Clerk

MEMORANDUM

This is an action by a federal employee, appearing pro se, who challenges garnishment of his wages pursuant to a state court domestic relations support order. Upon receipt of plaintiff's complaint and motions for a temporary restraining order and preliminary injunction, the Court promptly held a scheduling conference in open court in an attempt to clarify the underlying facts and confusing

allegations. 1/ Subsequent to this conference the defendants moved to dismiss and plaintiff filed points and authorities providing further support for his contention that this action may properly proceed in this court. The matter is now ripe for final resolution.

Plaintiff, who is allegedly a Virginia domiciliary, is subject to an order of the Florida Circuit Court for Okaloosa County requiring him to make support payments to his former wife and their child who apparently now live in Louisiana. The judgment of divorce and support was entered by the Florida court in September, 1977, after

---

1/ The Court proceeded to consider aspects of the case in a somewhat informal manner because plaintiff, who serves as part of peacekeeping forces in the Sinai, must leave the country this month. Plaintiff was assisted at the conference, held June 10, 1982, by two friends who as lawyers have been consulting with him over a long period and were familiar with the issues. The motion for a temporary restraining order was denied at the close of the conference.

contested proceedings. Plaintiff appeared personally, gave testimony and was represented by counsel. Plaintiff then sought to appeal but the appeal was dismissed because he was deemed in contempt of the lower court's order and the matter was not pursued to (See: 17a) a higher court. Given plaintiff's continuing failure to comply with the support order his former wife obtained a garnishment order from the Florida court dated March 31, 1980, directing that the Agency for International Development ("AID"), plaintiff's employer, pay a portion of plaintiff's wages to his wife. Garnishment was perfected pursuant to 42 U.S.C. §§ 659 (Supp. III 1979) which provides:

> Notwithstanding any other provision of law, effective January 1, 1975 moneys (the entitlement for employment) due from, or payable by, the United States ... to any individual ... shall be subject, in like manner and to the same extent as if the United States ... were a

> private person, to legal process brought for the enforcement, against such individual of his legal obligations to provide child support or make alimony payments.

AID has been complying with the garnishment order and has remitted funds to the wife's legal representative in Florida.

Plaintiff contends that the Florida court judgment is constitutionally invalid because findings of fact were signed by a judge who had not heard the testimony in the case and because unconstitutional conditions were imposed on his right to appeal the judgment through the Florida court system. From this premise he argues that AID has acted unconstitutionally in recognizing the Florida court garnishment order which was valid on its face and properly served because it rests on a constitutionally defective judgment. Alternatively, he suggests that 42 U.S.C. § 659 is unconstitutional as applied because it has had

the effect of extending the *in personam* jurisdiction of the Florida courts beyond the limits authorized by the due process clause. He seeks to enjoin defendants from making any payments to his former wife or the Florida courts and to have his former wife and child made parties to this action and ordered to show cause why they should not be required to return the money they have received. Plaintiff also seeks to have representatives of the Florida courts joined in this action so that they may be required to show cause why plaintiff's appeal from the divorce judgment was dismissed and why the garnishment order should not be cancelled.

Initially, defendants raise the defense of soverign immunity as a complete bar to this action. While it is clear that 42 U.S.C. § 659 did not grant jurisdiction to the federal courts to review the merits

of state domestic relations proceedings underlying individual garnishments, this action is not barred by soverign immunity as to defendant McPherson, the Administrator of AID. Regardless of whether plaintiff's claims have merit, it is sufficient to state that the doctrine of soverign immunity is not a bar to seeking an injunction against a federal official who allegedly has acted in violation of the Constitution. See Dugan v. Rank, 372 U.S. 609, 621-22 (1963); Larson v. Domestic & Foreign Commerce Corp., 337 U.S. 682, 690-91 (1949). Furthermore, because this action raises at least colorable constitutional claims this court has jurisdiction under 28 U.S.C. §§ 1331(a) (1976).

The constitutional challenge to 42 U.S.C. §§ 659 is wholly without merit. The statute is simply a waiver of soverign

immunity for the limited purpose of subjecting the United States to state court process to enforce an order for support or alimony payments in a domestic relations case. See Overman v. United States, 563 F.2d 1287, 1291 (8th Cir. 1977). The validity of such a waiver is not in doubt.

Plaintiff contends, however, that the effect of the statute in this instance is to work an unconstitutional extension of the Florida court's jurisdiction. He objects that the statute deprives him of a right to a hearing in the Virginia courts as normally required for recognition of foreign judgments. Plaintiff has no right, constitutional or otherwise, to litigate this matter in Virginia. Plaintiff's former wife has obtained a valid in personam judgment and implementing garnishment order against the United States in Florida. There is no question that the

United States is "present" in the State of Florida and therefore subject to a garnishment order issued by the courts of that state once the bar of soverign immunity has been eliminated. See Harris v. Balk, 198 U.S. 205 (1905); Diaz v. Diaz, 568 F.2d 1061, 1063 (4th Cir. 1977). Plaintiff is not deprived of any constitutional right because his employer is more readily subjected to process than other garnishees.

To the extent that plaintiff seeks to enjoin AID from recognizing the garnishment based on alleged constitutional defects in the Florida proceedings this court is without power to consider plaintiff's claims under the full faith and credit clause. See Huron Holding Corp. v. Lincoln Mining Operating Co., 312 U.S. 183 (1941); 28 U.S.C. § 1738 (1976). A state court judgment is entitled to full

faith and credit in federal court absent a substantial jurisdictional defect or extrinsic fraud. See Restatement (Second) of Conflicts of Laws §§ 434c, 343d, 434e & 440 (10th Tent. Draft 1964). As noted, the Florida Circuit Court had in personam jurisdiction in the action for divorce and support. There is also no dispute that the court was competent to adjudicate the matter. Although plaintiff asserts that his former wife induced him to marry her through fraud there is no contention that the judgment or order of the Florida court were themselves procured through fraud. See id. § 440 Comment d. Under these circumstances, plaintiff's claims that the procedures afforded by the Florida court were constitutionally defective should have been pursued through the Florida courts and, if necessary, to the United States Supreme Court. The Florida

court's resolution of plaintiff's constitutional challenges to those proceedings may not be litigated now in this Court. It is unnecessary to determine the extent, if any, to which remedies are still available to plaintiff to reopen the question of his continuing support obligation before Florida courts.

Accordingly, defendants' motion to dismiss must be granted. An appropriate Order is filed herewith.

/s/ Gerhard A. Gesell
UNITED STATES DISTRICT JUDGE

June 17, 1982

UNITED STATES COURT OF APPEALS
For the District
of Columbia Circuit

NO. 82-1853 September Term, 1982

Bruce Warren Rush
Appellant

Civil Action No.
82-01599

v.

United States Court
of Appeals For the
District of Columbia
Circuit
FILED Jun 23, 1983
George A. Fisher
Clerk

U.S. Agency for International Development, et al.
Appellee

BEFORE: Mikva, Edwards and Scalia, Circuit Judges

O R D E R

On consideration of the Petition for Rehearing of Appellant, Filed June 9, 1983, it is

ORDERED by the Court that the aforesaid Petition is denied.

FOR THE COURT:

George A. Fisher
Clerk

BY/s/Robert A. Bonner
Robert A. Bonner
Chief Deputy Clerk

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 82-1853 September Term, 1982

Bruce Warren Rush, Civil Action No. 82-01599

Appellant

v.

United States Court of Appeals for the District of Columbia Circuit, FILED JUN 23, 1983 George A. Fisher, Clerk

U.S. Agency for International Development et al,

Appellee

BEFORE: Robinson, Chief Judge, Wright, Tamm, Wilkey, Wald, Mikva, Edwards, Ginsberg, Bork and Scalia, Circuit Judges

O R D E R

The Suggestion for Rehearing en banc of Appellant, filed June 9, 1983, has been circulated to the full Court and no member has requested the taking of a vote thereon. On consideration of the foregoing, it is

ORDERED by the Court en banc that the aforesaid suggestion is denied.

FOR THE COURT, George A. Fisher
Clerk BY: /s/ Robert A. Bonner
Robert A. Bonner
Chief Deputy Clerk

APPENDIX F

UNITED STATES COURT OF APPEALS
For the Federal Circuit

ALLAN WAYNE MORTON Appellee,	)	Appeal No. 290-77
v.	)	
THE UNITED STATES Appellant	)	

DECIDED: May 17, 1983

Before MILLER, SMITH and NIES, Circuit Judges

MILLER, Circuit Judge

This appeal, in a case of first impression, is from a judgment[1] of the United States Claims Court based on its holding that Allan Wayne Morton was entitled to recover from the United States accrued amounts of money withheld from his compensation, as a Colonel in the United States Air Force, pursuant to writs of garnishment issued by the Circuit Court for the Tenth Judicial Circuit of Alabama. The arises under Title 37, United States Code (relating to pay and allowances of the uniformed services), and the Fifth Amendment

to the Constitution (prohibiting deprivation of property without due process of law). We affirm.*

*(For full opinion See Morton v. United States, 708 Fed 2d 680.)

1/ Entered October 8, 1982, pursuant to this court's order of October 4, 1982, and corresponding to the decision recommended by the trial judge in his opinion filed December 14, 1981.

Appendix G

CHRONOLOGY OF PHYSICAL RESIDENCE (RUSH)

1/	09/1938	RUSH BORN	KENTUCKY
2/	02/1962	RUSH ASSIGNED	VIETNAM
3/	03/1970	RUSH BECOMES MARRIED	VIETNAM
4/	06/1970-01/1971	WIFE IN U.S.	VIETNAM
5/	01/1971-05/1973	WIFE-THAILAND	VIETNAM
6/	06/1973-12/1973	BOTH IN U.S.	KY/VA.
7/	12/1973	RUSH LEAVES TO ASSIGN. IN	LAOS
8/	02/1974	WIFE JOINS RUSH IN	LAOS
9/	04/1975	WIFE LEAVES TO U.S.	LAOS
10	05/1975	RUSH LVS TO ASSIGN. IN	FLORIDA
11	07/1975	WIFE JOINS R. 60 DAYS -	FLORIDA
12	09/1975	RUSH LVS TO ASSIGN.	ARKANSAS
13	11/1975	RUSH ASSIGNED TO	DC/VIRGINIA
14	04/1976	RUSH FILES FLA SUIT	DC/VIRGINIA
15	05/1976	CHILD BORN FLA	DC/VIRGINIA
16	09/1976	FRAUD EVIDENCE RPTD	VIRGINIA
17	09/1977	FLA DIVORCE GRANTED	VIRGINIA
18	10/1977	WIFE MOVES TO GEORGIA	VIRGINIA
19	08/1978	WIFE MOVES TO ALABAMA	VIRGINIA
20	05/1980	WIFE MOVES LOUISIANA ADVISE AID INTERPLEAD	VIRGINIA
21	05/1981	RUSH ASSIGNED SINAI	VIRGINIA

APPENDIX H

CONSTITUTIONAL PROVISIONS

AMENDMENT 4

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT 5

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT 14

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person

within its jurisdiction the equal protection of the laws.

STATUTORY PROVISIONS

42 U.S.C. § 659 (Supp. II 1978).

(a) United States and District of Columbia to be subject to legal process.

Notwithstanding any other provision of law, effective January 1, 1975, moneys (the entitlement to which is based upon remuneration for employment) due from, or payable by, the United States or the District of Columbia (including any agency, subdivision, or instrumentality thereof) to an individual, including members of the armed services, shall be subject, in like manner and to the same extent as if the United States or the District of Columbia were a private person, to legal process brought for the enforcement, against such individual of his legal obligations to provide child support or make alimony payments.

* * * *

(f) Non-liability of United States, disbursing officers, and governmental entities with respect to payments.

Neither the United States, any disbursing officer, nor governmental entity shall be liable with respect to any payment made from moneys due or payable from the United States to any individual pursuant to legal process regular on its face, if such payment is made in accordance with this section and the regulations issued to carry out this section.

STATUTORY PROVISIONS
(Continued)

42 U.S.C. § 662 (Supp. II 1978)

Definitions
For purposes of Section 659 of this title --

* * * *

(e) The term "legal process" means any writ, order, summons, or other similar process in the nature of garnishment, which--

(1) is issued by (A) a court of competent jurisdiction within any State, territory, or possession of the United States, (B) a court of competent jurisdiction in any foreign country with which the United States has entered into an agreement which requires the United States to honor such process, or (C) an authorized official pursuant to an order of such court of competent jurisdiction or pursuant to State or local law, and

(2) is directed to, and the purpose of which is to compel, a governmental entity, which holds moneys which are otherwise payable to an individual, to make a payment from such moneys to another party in order to satisfy a legal obligation of such individual to provide child support or make alimony payments.

* * * *